

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1269**

State of Minnesota,
Respondent,

vs.

Damien Paul Johnson,
Appellant.

**Filed August 7, 2023
Affirmed
Worke, Judge**

Clay County District Court
File No. 14-CR-22-55

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant State Public Defender, Minneapolis, Minnesota (for
appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his first-degree assault conviction, arguing that the evidence
was insufficient to establish venue and identity. We affirm.

FACTS

For two months, J.L. dated appellant Damien Paul Johnson. Their relationship ended on December 31, 2021, after Johnson left J.L. at a hospital with a severe stab wound to her leg, a broken nose, black eyes, and bruises all over her body.

Respondent State of Minnesota charged Johnson with assault. At Johnson's jury trial, J.L. testified that her relationship with Johnson was "toxic"; they fought often. J.L. testified that Johnson "usually would hit [her] on [her] legs, because then nobody could see it." On the night of December 31, J.L. and Johnson were at J.L.'s house in Fargo, North Dakota, drinking alcohol before going to a party in Moorhead, Minnesota. J.L. sent her sister a text message at 10:16 p.m. stating that she was on her way to the party. J.L. testified that she did not "really know" what time she and Johnson arrived at the party, but thought it was "[n]ine or ten-ish."

J.L. and Johnson got separated at the party. J.L. heard that Johnson was mad at her. When she found him, he grabbed her hair, dragged her upstairs, and hit her. Some girls intervened and brought J.L. into a bathroom. J.L. heard Johnson screaming at her. She told the girls that she was fine and went out by Johnson. The party host wanted J.L. and Johnson to leave because of their fighting. J.L. testified that they were not at the party for very long, maybe a half-hour, but she did not know what time they left.

Johnson grabbed J.L.'s hair and dragged her outside. As they walked to Johnson's vehicle, J.L. dropped her phone. It was icy outside and her phone slid under a vehicle. She asked Johnson for help. Johnson picked up J.L.'s phone, pulled her off the ground, and

“started beating on [her].” Johnson grabbed her hair, punched her, dragged her, and hit her face.

Johnson beat J.L. outside of his vehicle and hit J.L.’s head on the concrete. J.L. testified that she did not remember getting into Johnson’s vehicle. She either “blacked out” because she drank too much or lost consciousness because Johnson “knocked [her] out.” The next thing she recalled was being in the vehicle with her hand on her leg and “blood everywhere.” Johnson was driving and crying, asking, “[W]here’s a hospital; where’s a hospital; where’s a hospital?” He was also “banging his hands on the steering wheel and he was like . . . what did I do[?]”

The prosecutor asked J.L., “Do you recall where you were at . . . this point?” She replied, “Not really. I think we were still in Moorhead.” J.L. testified that after she got stabbed, she “believe[d]” that they were still in Moorhead, and that when she “came to” in the vehicle, they were “in the area of the party.” J.L. was “pretty sure” and “fairly certain” that they were in Moorhead. On cross-examination, J.L. agreed that the party was not “far from the [North Dakota] border.”

J.L. testified that she directed Johnson to a hospital in downtown Fargo, but no one was there because there was no emergency room. They left to find another hospital but J.L. did not remember how they got to the next hospital. When they arrived at the second hospital, Johnson handed J.L. to a security officer and left; J.L. never saw Johnson again.

The security officer testified that Johnson and J.L. arrived “approximately five minutes to midnight.” He testified that he asked J.L., “Who did this to you” and she replied, “He did.”

J.L.'s sister testified that Johnson arrived at her mom's house on December 31 "crying [and] hollering something about [J.L.] being jumped and stabbed at a party." J.L.'s sister asked Johnson what happened. Johnson told her that J.L. "got drunk and stabbed" but he was not there to see it happen and did not call the police because he did not have a phone.

J.L. was in the hospital for six days and underwent three surgeries on her leg. The surgeon who operated on J.L.'s leg testified that she had a deep stab wound that required a tourniquet to stop the bleeding. He testified that if they had not performed the surgery, J.L. "would have bled to death."

The first Fargo police officer to arrive at the hospital testified that J.L. stated that her boyfriend stabbed her. The second time the officer talked to J.L., she told him that Johnson pulled her out of a party and when they were in his vehicle, Johnson hit her across the face and then stabbed her in the leg with a knife.

A Moorhead police officer testified that he was notified by Fargo law enforcement that J.L. had been stabbed at a party in Moorhead. J.L. reported to the Moorhead officer that when she realized she had been stabbed, she was in Johnson's vehicle, which had not moved from where it was parked down the block from the party in Moorhead. A flyer for the party also confirmed that the party occurred in Moorhead.

Johnson did not testify. The jury found him guilty as charged. The district court sentenced Johnson to 86 months in prison. This appeal followed.

DECISION

Johnson argues that his conviction must be reversed for insufficient evidence because the state failed to establish where the assault occurred or that he stabbed J.L.

Venue

Venue is an element of every crime, and the state must prove beyond a reasonable doubt that the alleged crime occurred in the charging county. Minn. Const. art. I, § 6; *State v. Bahri*, 514 N.W.2d 580, 582 (Minn. App. 1994), *rev. denied* (Minn. June 15, 1994). The state is not required to prove venue by direct evidence. *Bahri*, 514 N.W.2d at 582. Rather, it can be established “by all the reasonable inferences arising from the totality of the surrounding circumstances.” *State v. Carignan*, 272 N.W.2d 748, 749 (Minn. 1978). Thus, venue may be established by circumstantial evidence. *Bahri*, 514 N.W.2d at 582.

The parties agree the state used circumstantial evidence to prove venue. Circumstantial evidence is evidence from which a fact-finder can “infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* When a conviction is based on circumstantial evidence, we apply a heightened two-step standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). We look at the

circumstantial evidence as a whole and do not defer to the fact-finder's choice between reasonable inferences. *Id.* Despite this stricter standard of review, the jury's verdict is still given due deference because the jury is in the best position to evaluate the evidence. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). "As in all cases, the jury determines the credibility and weight given to the testimony of individual witnesses." *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988).

We first identify the circumstances proved:

(1) At 10:16 p.m. on December 31, 2021, J.L. sent her sister a text message stating that she was on her way to a party; (2) the party was in Moorhead, Minnesota, not "far from the [North Dakota] border"; (3) J.L. did not "really know" what time she and Johnson arrived at the party but guessed that it was around "[n]ine or ten-ish"; (4) Johnson dragged J.L. out of the party after maybe a half-hour; (5) J.L. dropped her phone walking to Johnson's vehicle; (6) J.L.'s phone slid underneath a vehicle and J.L. asked Johnson for help; (7) Johnson retrieved the phone, picked up J.L., then beat her; (8) Johnson hit J.L.'s head on the concrete outside the vehicle; (9) J.L. "blacked out" before waking up with her hand on her leg, "blood . . . seeping through [her] hands," and realizing that she had been stabbed; (10) there was a significant amount of blood in the vehicle; (11) Johnson asked the location of a hospital and was driving "in the area of the party"; (12) J.L. thought that they were still in Moorhead and directed Johnson to a hospital in Fargo; (13) there was nobody at the hospital, so Johnson "got in the car" and drove to another hospital; (14) Johnson arrived at the second hospital "approximately five minutes to midnight"; (15) Johnson told J.L.'s sister that J.L. had been "jumped and stabbed at a party"; (16) J.L.

told the first responding officer that Johnson stabbed her inside the vehicle; and (17) J.L. told a Moorhead officer that when she realized she had been stabbed, she was in the vehicle and the vehicle had not moved from its parking spot down the block from the party in Moorhead.

Second, we assess whether the circumstances proved are consistent with the conclusion that the offense occurred in Moorhead, Clay County, and inconsistent with a reasonable hypothesis that it occurred in Fargo. The circumstances permit a reasonable conclusion that Johnson stabbed J.L. in the vehicle while they were parked outside the party in Moorhead. *See State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997) (stating that evidence must be viewed in the light most favorable to the conviction and the reviewing court must assume that the jury believed the state's witnesses and disbelieved any contradictory evidence). But Johnson claims that there is a two-hour gap between when he and J.L. left the party and when they arrived at the hospital in Fargo. Johnson suggests that in the two-hour gap, he and J.L. went to her house in Fargo, where, he claims, the stabbing occurred. Johnson bases this timeline on J.L. leaving the party "at approximately 10:00 p.m." and arriving at the second hospital a few minutes before midnight.

J.L. sent her sister a text message at 10:16 p.m. stating that she was on the way to the party. This shows that J.L. and Johnson did not leave the party at approximately 10:00 p.m. Johnson did not park in front of the house where the party was located but parked down the block. He and J.L. left the house after approximately one-half hour and walked back to the vehicle. J.L. and Johnson stopped at least two times—when J.L. dropped her phone and when Johnson beat J.L. J.L. did not remember getting into the

vehicle, likely because Johnson hit her head on the concrete. It is unknown how long she was unconscious, but she told an officer that when she regained consciousness and realized that she was stabbed, the vehicle was still parked in Moorhead at the party location.

Johnson then drove to a hospital. He got out of the vehicle and found that there was no emergency department. He got back into the vehicle and found his way to a second hospital. The record shows that Johnson is not from the Fargo area and did not know where the hospitals were located, and J.L. testified that she did not remember getting to the second hospital. The record does not support a reasonable hypothesis that there was a two-hour gap between J.L. and Johnson leaving the party and arriving at the second hospital.

Johnson also claims that J.L.'s wound was so significant that she would have bled out and died if they were not close to the hospital in Fargo. But the surgeon testified that J.L. could have bled out if she did not receive surgery. The surgeon did not testify about a timeframe that would have resulted in J.L.'s death if her wound was untreated. Finally, Johnson told J.L.'s sister that J.L. was stabbed at the party. The circumstantial evidence, taken as a whole, supports a reasonable conclusion that venue was in Moorhead and does not support a rational hypothesis that the stabbing occurred in Fargo.

Identity

Johnson also argues that the state failed to prove that he committed the stabbing because J.L. did not see it occur. Again, we conduct the two-step circumstantial-evidence analysis because J.L. stated that she was unconscious, and when she awoke, she realized that she had been stabbed.

The circumstances proved regarding identity are as follows:

(1) J.L. and Johnson were in a “toxic” relationship in which they fought a lot; (2) Johnson “usually would hit” J.L. on her legs to conceal the wounds; (3) J.L. and Johnson got into a fight at the party; (4) J.L. and Johnson left the party together; (5) Johnson beat J.L. as they walked to the vehicle; (6) J.L. lost consciousness and awoke with blood everywhere realizing that she had been stabbed in the leg; (7) Johnson was crying, “banging his hands on the steering wheel,” and stating, “What did I do”; (8) nobody else was in the vehicle; (9) Johnson left J.L. at the hospital; (10) J.L. told the security officer that Johnson caused her injury; (11) Johnson told J.L.’s sister that J.L. had been stabbed at the party but that he did not call police because he did not have a phone; and (12) J.L. told law enforcement that Johnson stabbed her.

These circumstances proved that Johnson stabbed J.L. First, they were the only people in the vehicle and the vehicle was covered in blood. Second, Johnson was angry with J.L. and assaulted her at the party, causing the host to ask them to leave. In the past when Johnson had been angry with J.L., he attacked her legs. And during this incident, J.L. was stabbed in the leg. J.L. also heard Johnson state: “What did I do?” Johnson then left J.L. at the hospital. J.L. told the hospital security officer that Johnson attacked her. And she told law enforcement that Johnson stabbed her. The circumstantial evidence against Johnson is overwhelming. There are no other reasonable hypotheses showing that another individual stabbed J.L. Therefore, the evidence of identity was sufficient.

Affirmed.